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>> GREG SHATAN: Hi it is Greg Shatan. For some reason I was prompted to download and unzip an open -- an add-in in order to open Adobe Connect which is rather disconcerting two moments before the call. But here I am two minutes after the call. And my attempts to deal with on my tablet seem to be -- okay. Now they are having to -- now there is two of me. Okay. I understand we may not get too many more people than we currently have. This being a call which is very convenient for our Asia-Pacific and not so convenient for many others. It is 1 a.m. here in New York. And, of course, we have a 1 a.m. call tomorrow. And 11 p.m. call for anybody in RPM review group, all times Eastern. So in any case I will stop digressing and why don't we start the call now since it is -- hello and welcome to the CCWG jurisdiction subgroup meeting No. 28, April 25th, 2017, 0500 UTC. My apologies to the live captioner for captioning the meeting, for talking too fast. I will not say that again.

In any event let's first review the agenda. First are there any changes to SOIs? I see none. Let's identify any audio only or phone number participants. We have no phone numbers. Is there anybody who is only on audio? There doesn't appear to be.

Let's quickly see what the rest of the agenda is. No. 4, we'll be reviewing decisions and action items from our last call. No. 5 update on the questionnaire. Including how we shall start dealing with responses and translation. No. 6, update on the abbreviation review and the process and progress of that effort. No. 7, AOB. And then next meeting and then adjournment. Let us go back up to the fourth item, first substantive item of the agenda. Review of decisions from the last call. There was one decision which was that questionnaire responses will be accepted until 23:59 UTC until Friday the 21st of April which was last Friday. Next was the staff to get the non-English responses translated to English. The next item, next with regard to the immediate case analysis, draft a request to ICANN legal as to why there is no choice of law in the registry agreement and that extends to the accreditation agreement as well and I sent around just before this call a -- a draft which we can deal with in AOB for that. Third was to place the work plan in Google docs and then post it to the group to facilitate commenting. That has been done. You should have received that yesterday although it feels like earlier today for those who sleep in between that time and this. Last action item was to post an update to the list on review of ICANN litigations, noting which cases are due, from whom and which cases still need to be claimed for review. That will be covered in more detail in item 6.

Any questions about these decisions or action items at this point? I see none. I note earlier comment, voice is unclear, seems sleepy. Yes, I should be asleep. But such is life. Move on to update on questionnaire, the questionnaire did close including some time for late responses on April 21st. We however received a response yesterday from the Ministry of Transportation and Communications of Republic of China from Shawn Morris Lynn. So we have a question for the group which is whether or not to accept this response that came in past our overtime deadline. Rather than giving my opinion first I would like to see if anyone else would like to offer theirs. In chat I see Avri Doria saying yes, accept. Is there anyone opposed to that viewpoint? Kavouss Arasteh, please go ahead. Kavouss, please go ahead. We did not hear you. I see --

>> KAVOUSS ARASTEH: The source of the document, which country or which territory, please. Thank you.

>> GREG SHATAN: It came from the Ministry of Transportation and communication of the Republic of China. Now Shawn Morris Lynn listed in 5.1.1. Just to be clear, Republic of China refers to island also known as Taiwan. Distinguish from people's Republic of China from main land China. All of these terms are not to make any judgment. I see in the chat several recommendations to accept this input and no objections.

I do believe that's a good course of action. My general belief is that as long as something comes in and can be incorporated in to the workstream of question/responses or with the like, that it should be taken. Someone once said we should be liberal in what we accept and conservative in what we send or something like that. So that works I think in policy as well as long as it doesn't get in the way of our work plan and it does not in this case. So we will accept this response from Mr. Lynn on behalf of the Republic of China, Ministry of Transportation And Communication and should be added to the pile so to speak, questionnaire response tool. We think we have received several other responses before but after our last call from Jesus Rivera, Mzia Gogilashiviili, Lance Hinds on behalf of the government of Guyana. I assume but do not confirm that they were distributed to the list and they should in any case as we should know they are posted to our Wiki page and we should remember to look there for any of these questions. Avri Doria says always good to hear Postel and the TCP protocol spec quoted. After midnight I try not to go for attribution because I could be wrong. Thank you Brenda for posting in chat the questionnaire Wiki page. You will see each of these responses with the No. 5.2. Any questions about these? I can't remember off the top of my head any of these responses. In the interest of time I would direct everyone to the Wiki page for any other in terms of questions about any of these, our responses. 5.3 brings us to a quick status report on translation. First there were no new non-English responses received after our last meeting. We received three non-English responses before the last meeting which would be submitted for translation by staff. And the first Spanish to English has been completed. And I will turn to Bernie whose hand is up and see if we have the latest information on the other translations. Bernie, please go ahead.

>> Bernie: Thank you Greg. This is simply to confirm that the French and Russian translations have been received and will be posted under those originally replies very shortly if Brenda has not already done so. Thank you.

>> GREG SHATAN: Thank you. Has the Russian been translated in to to French in the style of the 19th Century garb or only in to English? No need to answer that. Thank you for giving us that report and good to hear we are in good shape on translations. Next item, staff to provide a summary of responses. A response tool has been completed. Draft version. I expect that will be distributed to the list tomorrow. However given our working method the intention is for the small group to evaluate and report on these to the large group. While everyone is more than free to read all of the responses, and consider them we will be looking to the small group to make some order

out of them and to deal with reporting them to the larger group.

That segways nicely in to 5.5, next steps. A question -- the small group now has an e-mail list of its own which is publicly archived. And I think that has been distributed to the larger list, at least -- location of archives so that people can follow the discussion. However there has not yet been much discussion. I put out a general question to the small group on how to evaluate and report on the responses and our conversation has yet to really take fire or catch fire. And will be circulating a dual poll to try to get a call of the small group. But I am hopeful that much work can be done on the small group's list rather than waiting for a call which will need to be -- take a couple of days to be scheduled and then a couple of days until it occurs. So I don't want undue delay or any delay. And therefore I would encourage those members of the small group to look for the e-mail regarding next steps and to respond to it.

Any questions on the questionnaire or the responses or the like? Kavouss please go ahead.

>> KAVOUSS ARASTEH: Not about the questionnaire. You referred to the small group. What are the small groups that have been established, that will be established? And second Greg, today the way you speak is quite different because your word is quite different and it is not very clear for me. Maybe you use different communication than before. Before you were very, very clear. Thank you.

>> GREG SHATAN: Thanks Kavouss. I am not sure why that would be. I am on the same phone I always use. But I see Avri says I can't understand what Kavouss says. It is all garbled. After we finish fixing the Internet maybe we should go back and fix the telephone system. I am sure the ITU would welcome that greatly. Apologies for digressing. I will try to speak as clearly and in as happy a tone as possible. In any case the small group was formed two or three meetings ago. We had several volunteers. Kavouss you are a member of the small group along with several other members of the larger group. And there is an e-mail that was sent to the small group establishing the e-mail list for that group and trying to kick off that conversation. Given the cascade of e-mails that we all receive on a daily basis I will try to go back and resend that initial e-mail so that we can get that conversation moving. As well we will send out a doodle poll on that same list so that we can get our work in that area rolling. Is there anything else on the questionnaire before we move along to the litigation review? I think that's it. So why don't we move on to update on litigation review and if staff could put the litigation review list up in the Adobe Connect, I would be most appreciative.

It looks like it is being shared. Here we have the list. I

have slightly upgraded this list which lives as a Google doc and it has been downloaded earlier today, depending upon what you consider to be today. In the last 12 hours let's say for this call. Now using the miracle of color coding, help track with the eye the information being conveyed in text. In the right-hand side column, anything that is in the draft for comment status is in green. And these are drafts that have both been sent to the list and discussed on our prior calls. So essentially they are final drafts at this point, subject to any comment and several of them were upgraded or revised after they were discussed on the call. Thankful to each of those who volunteered on those. So if we -- you should all have scroll control. You will see anything that is currently been claimed but not yet circulated as a draft summary is in yellow and is marked as analyzing. The first page things look pretty good in terms of our progress. The second page not so good. Lots of -- very little color here. And the third page completes the downfall of our progress. And I have also added a progress tracking chart down here. We haven't been tracking it really regularly but we did have an earlier instance of a PDF of this list. So I was able to go back to that instance and compare the instance to yesterday, the 24th. We have 35 total cases. That is a constant. Of that we had five cases that were being analyzed and six that had already been put in to draft summary as of a month ago. And as of today we have two more that have made it in to the draft stage or the -- the summary prepared stage. And two more that have been picked up for analysis. So we have 7 pending cases and 8 that have already been essentially completed but that still leaves us with 20 unclaimed, 20 out of 35 is roughly 60%. That is not very good progress for something we had hopes, dreams of maybe getting done by the end of April, which ends in less than a week. So I really have to ask those including myself who have cases they claim for analysis to complete their analyses in the summary chart. And I need to ask that anyone on the list and those reading this transcript afterwards since I am preaching somewhat to the choir for those who are willing to be on this call and I do believe there is only one person who is looking at daylight while we are on this call, but in any case, those who are not on this call but reading the transcript should feel even more for not claiming a case. I do hope you want the -- the form was circulated originally and then a call of revised versions. I will recirculate it. And also in the same folder as the file -- as the sign up and I will make sure to recirculate the summary form so that it can be used by Kavouss and Avri and others who are wishing to make progress with their cases. So I will also remind me to do the two cases that I claimed as well with the

same summary chart. So let us hope -- I have put out three more weeks' worth of meeting dates in the chart and let's hope that by the 15th of May we have all 20 cases unclaimed and claimed and analyzed and currently being analyzed, also analyzed. Would love to finish this. That is going to take 27 reviews. That's about nine a week, including we need more people to deal with this. I will not go on further. But let's encourage all to pick up a case and I will make this place on the list as well. So I think we definitely have a few people who be easily suited to do this work, understanding that reading what are primarily U.S. court decisions and papers is something that comes easier to some of you who has been trained and may even do this for a living as opposed to others. And I appreciate all efforts and if in fact -- do not feel shy if you are -- don't feel as well equipped to do this, you can try to help you in the meeting or on the list with anything you don't understand. So it is better to keep -- better to give it a try than to leave it only those who feel the most suited to do it. David McAuley says in chat let's make sure sign is up kept up to date so we don't duplicate case reviews. I would like the signup sheet, everyone has editing rights on that in a Google doc. If you have the link you can fill in your name. So plan A is if you claim a document, literally go to the list and put your name down. Plan B if for reason you can't access a Google doc either based on system issues or the fact that you are off computer, send your request to the e-mail list and staff or I will put your name down on your behalf. But please don't feel shy. Adopt a document. They are lonely. Adopt a case. Thank you very much. Let us go back to the agenda. Any other questions on the litigation review before we move along?

I see no questions. I encourage everyone to join the adopt a doc program. Sort of like adopting a few miles of highway and cleaning it. That's what they do in the United States. So highly not far from Bette Midler to contribute. Mini character in hello dolly. I digress. Farzaneh don't be scared. Consider being a foster parent. You can return the case to the orphanage when you are complete. Let us move now to all other business. And as I mentioned there is one specific item of AOB that I have which is the draft follow-up question for ICANN legal. Is there any other business or AOB? Seeing none if I could ask staff to put up the document which was sent to the list scant minutes before this call. Given that this was sent just before the call I don't expect everyone to be fluent in this document, but nonetheless let me walk you through it to the extent it is not self-explanatory. We did get a response from the ICANN legal of the number of questions. The name dot space issue the fact that the registry agreement does not have an applicable law provision

or choice of law choice, came up in the course of discussion of that case. And on the last call there were some questions about why ICANN would do that. The ICANN legal answer does in fact, answer it to some extent. The answer is historically the registry and registrar accreditation agreements are and have been silent on the choice of law to be applied in an arbitration or litigation. This allows a party to an arbitration or litigation to argue, pursue want to court procedures and laws, what law is appropriate to govern the specific conduct at issue. Arbitrators and courts are well suited to make those types of determination and then there is a footnote regarding a few exceptions to this, ccTLDs and special for dot EU. No need to read the footnote because it does not -- not germane to the question which we are asking which is why don't you have choice of law in these contracts. So having read over the chat and note from last week's meeting unfortunately the transcript doesn't seem to be available yet. I formulated the follow-up questions which are in Italics here as follows: The subgroup we like to better understand ICANN's reasons for not specifying applicable law in these agreements. Aside from determining the law that two Vernes the party's conduct applicable laws also significant when interpreting the contract itself. First question, what are ICANN's reasons and considerations in not specifying the law of the contract. Second how did ICANN take this in to consideration when drafting these contracts. Third, how does ICANN take this in to consideration when interpreting contracts where there is no arbitration or litigation. For example, in contract negotiations, disagreements on contract interpretations, contract compliance, contract enforcement, and allegations of contractual breach, there should be a closed paren, then question mark. That seemed to me to be kind of the open question which is how do you deal with applicable law when you don't have a court that's going to tell you which law to apply and you don't have a contract that tells you which law to apply. There are many times in contracts need to be interpreted when they are not in front of a judge or an arbitrator. Thankfully. David suggests that a general bullet, catch all question, what other information can you share with the group to aid it in understanding the lack of applicable law clause. David, I think that's a good suggestion. And we'll take note of that. And hopefully especially now that we have a caption stream we will be able to take note of that plus it is in the chat anyway. So why am I saying this, the captions will be the only place to find that. But in any case thank you David. That I think is helpful. It is always good to have a catch all at the end of any list of questions.

Any comments or questions, additions to this follow-up?

Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes. Not comment. My voice is not garbled as Avri said. Sorry for that. In case that there is no section of any applicable law, what would be the governing a situation? Would it be a default position? Thank you.

>> GREG SHATAN: Kavouss, just to try to answer that briefly, if you were in court or in an arbitration, there are choice of law rules, sometimes called conflicts of laws rules that would be applied by the judge in order to determine what law applies. Without an arbitrator or a judge to basically stuck arguing first which conflict of laws rules apply and then applying those to try to argue which law would apply, so where you have two parties, let's just call them ICANN and registry X, registry X may believe that the law should be the law of Zanzibar where they are located, I recognize Zanzibar is not a country anymore, it is part of Tanzania and the laws of California should apply and registry X argues that there are legal reasons that the law should apply and the ICANN argue the opposite. You do your best in between that as you do in any area where you have no third party and then question would be really what is the substantive difference in the two laws and how they would interpret the contract. Typically if there is no reason to be concerned about the choice of law because it doesn't change the interpretation of the contract, the issue wouldn't come up. So this unfortunately means that when there really is a difference in how two different laws would interpret the same contractual provision or would interpret the same contract, then you are stuck with an unrefereed disagree between two parties. That would be my view of how it would be dealt with. David Mcauley notes in that example with no clause the Kay may be Zanzibarred. I am too tired to law. Kavouss says all these decisions will be made by the court. If you are in court, will bear an argue of which apply to the law and the court will apply the appropriate court of law. For every contract dispute that ends up in court there is probably 10 or 100 contract disputes that don't get anywhere near court or an arbitrator. Any time there is a contract that is in force between two parties, and sometimes the applicable law of the contract is germane to interpreting. At that point you are kind of stuck just lawyer on lawyer trying to work it out. And that's how lawyers get paid.

In any case -- that's at how they bill time. Whether they get paid is a different question. Any other points on this question for ICANN legal? Seeing none I will David's fourth bullet and add it to this and then following our protocol I will send this to the co-Chairs for a review and review by the legal Committee of the CCWG and if they approve this will be sent on to ICANN

legal for response. Let us go back to the agenda which I think brings us to all other business. The only other business I would like to mention is a reminder that we have posted the draft work plan and I have updated it slightly since our last call just to try to flush out the coming weeks and months in terms of timing. So the only real changes since we reviewed it are in the schedule chart at the back of the document. But I do want everyone to try to look at it because this is our work plan. It is not my work plan alone. And we need to try to stick with it. If it is unrealistic we need to acknowledge that. If it is realistic we need to make it realistic such as review the remainder of the litigation and by getting the question anywhere response team come up with a method of evaluating and dealing with the responses and the like.

So that is the only other business I have. Just to remind everyone to do those things and the other action item is to dig up and recirculate the summary for the litigation reviewer's team and the kickoff e-mail for the small group. Kavouss, your hand is up. Please go ahead.

>> KAVOUSS ARASTEH: Yes, on the word form that you mentioned that you have recently amended, I suggest that any document that you produce perhaps we should have an appellation of the version, going to version 1, 2, 3, so and on so forth. When we open that we know which version we have. We have so many documents at some point, it is better to have a reference to the version. We do that when we discuss it in ICT, document we have version number, version, 2, 3 and so on. Thank you.

>> Greg if you are speaking we are not hearing you.

>> GREG SHATAN: Thank you. I was speaking to the mute button. Kavouss, thank you for your suggestion. I think that's a good idea and I will adopt that. The version that was reviewed on the call a couple of weeks was headed discussion draft, April 11, 2017 and the draft that is now up for comment is headed comment draft 24th of April 2017. I agree that versioning is a better way to keep track of changes and also to keep track of minor changes versus major changes by using the N point system, so beloved by software developers.

So I will do that and hopefully people will look at that document. With that I see no other business and no other hands. So I will call this meeting adjourned at 1:44 New York time. Also Montreal time, Quebec time and a number of other times from pole to pole and this will give everyone 15 minutes of sleep or of daylight and I hope you enjoy whichever you have in front of you. So I thank you. This meeting is adjourned and you may stop the recording. The next meeting is in one week at 1300 hours. Good night all.

(Session concluded at 12:44 a.m. CST)

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